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 10 GE Consumer Finance, Inc.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

13 PATRICIA C. BARBERA,
 14
 15 Plaintiff

16 vs.

17 WMC MORTGAGE CORPORATION, a
 18 California corporation; aka WMC Direct, a
 19 California Business Entity; GE Consumer
 20 Finance, a unit of General Electric
 21 Company; Select Portfolio Servicing Corp,
 22 a Utah Corporation; Fairbanks Holding
 23 Corporation, a Delaware Corporation; and
 24 Land Title Company of Marin, a
 25 California Business Entity;
 26 Does 1 thru 100, inclusive.

27 Defendants.
 28

Case No.: 3:08-cv-2677-PJH

**DEFENDANTS WMC MORTGAGE,
 LLC AND GE CONSUMER
 FINANCE, INC.'S
 ADMINISTRATIVE MOTION TO
 CONSIDER WHETHER CASES
 SHOULD BE RELATED**

**[REQUEST FOR JUDICIAL NOTICE
 FILED CONCURRENTLY
 HEREWITH]**

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

Pursuant to Rule 3-3(c) and 3-12, defendants WMC Mortgage, LLC (“WMC Mortgage”) (successor in interest to “WMC Mortgage Corporation”) and GE Consumer Finance (“GECF”) (hereinafter collectively referred to as “Defendants”), by and through their attorneys, submit this Administrative Motion to Consider Whether Cases Should be Related. Specifically, Defendants seek to have Plaintiff’s current complaint, which as described below is nearly identical to her previously filed complaint, assigned to the Honorable Judge Sandra Brown Armstrong, who has already ruled on these identical issues as between these identical parties.

This Motion is submitted on the grounds that Plaintiff filed a prior action in this court in 2004, *Patricia C. Barbera v. WMC Mortgage Corp., et al.* (Case No. 4:04-cv-03738-SBA) that is related to the present action because: (1) both actions concern substantially the same parties, property, transactions, and events; and (2) there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges. Civ. L.R. 3-12(a). Causes of action in the current complaint which are based on federal law were asserted in the prior action and were *dismissed with prejudice*. This Motion is based on this Motion and the Request for Judicial Notice filed concurrently herewith.

A. Brief Statement of the Relationship of the Actions

On July 23, 2004, Plaintiff filed a complaint against Defendants WMC Mortgage and GECF in Superior Court of California, San Francisco County (*Patricia C. Barbera v. WMC Mortgage Corp., et al.* (Case No. 4:04-cv-03738-SBA)), alleging various federal and state causes of action. Plaintiff’s federal causes of actions included violations of: (1) the federal Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*, (2) the federal Home Ownership and Equity Protection Act (“HOEPA”), 15 U.S.C. § 1639; (3) the federal Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2605 *et seq.*; and (4) the federal Fair Debt Collections Practices Act, 15 U.S.C. § 1692. [Request for Judicial Notice (“RJN”), Exh. A, Plaintiff’s 2004 Complaint.] Plaintiff’s state causes of action included: (1) Rescission; (2) Unlawful

1 predatory lending practices in violation of California Unfair Business Practices Act,
 2 Cal. Bus. & Prof. Code § 17200 *et seq.*; (3) Misrepresentation and Inducement in
 3 violation of the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et*
 4 *seq.*; (4) Breach of Contract; (5) Usury Damages; (5) Fraud; and (6) Elder Abuse. *Id.*
 5 On September 3, 2004, Defendants removed the action to the Northern District of
 6 California, San Francisco Division. [RJN, Exh. B, Defendants' 2004 Removal.] On
 7 December 13, 2004, Plaintiff voluntarily dismissed GECF, without prejudice. [RJN,
 8 Exh. C, Plaintiff's 2004 Notice of Voluntary Dismissal] On January 19, 2006, the
 9 Honorable Judge Sandra Brown Armstrong of the Northern District Court of
 10 California, San Francisco Division, dismissed, with prejudice, all of Plaintiff's federal
 11 causes of action against WMC Mortgage and remanded Plaintiff's state claims to the
 12 Superior Court of California for the County of San Francisco. [RJN, Exh. D, Court
 13 Order Granting WMC Mortgage's Motion to Dismiss With Prejudice.] Upon remand,
 14 on April 3, 2006, the San Francisco Superior Court entered a judgment against
 15 Plaintiff, dismissing, *with prejudice*, all of Plaintiff's state claims against WMC
 16 Mortgage. [RJN, Exh. E, San Francisco Superior Court Judgment Dismissing
 17 Plaintiff's State Causes of Action.]

18 Notwithstanding this Court's prior dismissal with prejudice of Plaintiff's federal
 19 causes of action against WMC Mortgage, and the Superior Court's dismissal with
 20 prejudice of the state claims after remand, Plaintiff filed the present complaint on
 21 April 11, 2008, in the San Francisco Superior court against WMC Mortgage and
 22 GECF, and others, alleging the *identical federal causes of action as alleged in her*
 23 *2004 complaint*. On May 28, 2008, Defendants filed a Notice of Removal with the
 24 Northern District of California, San Francisco Division. [RJN, Exh. F, Defendant's
 25 2008 Notice of Removal.]

26 In addition, Plaintiff's present complaint includes a majority of the same state
 27 causes of action that were previously dismissed by the San Francisco Superior Court,
 28 including: (1) Rescission; (2) Unlawful predatory lending practices in violation of

California Unfair Business Practices Act, Cal. Bus. & Prof. Code § 17200 *et seq.*; (3) Misrepresentation and Inducement in violation of the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*; (4) Breach of Contract; (5) Usury Damages; and (5) Fraud.¹ Further, both actions are based on almost identical factual allegations related to the same loan at issue that Plaintiff obtained on June 11, 1997.²

Indisputably, Plaintiff's 2004 action and the present action at issue concern the same parties, property, transactions, and events. Indeed, there will be an unduly burdensome duplication of labor and expense and potentially conflicting results if this case is conducted by a judge other than the Honorable Judge Sandra Brown Armstrong, who has already ruled on these issues. Accordingly, Defendants respectfully request that this Court grant their Administrative Motion to Consider Whether Cases Should Be Related and transfer this matter to the Honorable Judge Sandra Brown Armstrong.

DATED: June 2, 2008

REED SMITH LLP

By /s/ Christopher O. Rivas
 Scott H. Jacobs
 Christopher O. Rivas
 Attorneys for Defendants
 WMC Mortgage, LLC and
 GE Consumer Finance, Inc.

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¹ Plaintiff's present complaint includes three additional causes of action: (1) Breach of fiduciary duty; (2) Negligent Infliction of Emotional Distress; and (3) Unclean Hands. These three causes of action are also based on almost identical factual allegations asserted in Plaintiff's 2004 complaint and are related to the same loan at issue that Plaintiff obtained on June 11, 1997.

² Because these issues have already been ruled on by this Court, Defendants will move to dismiss this action based not only on the substantive and procedural defects therein, but also on the grounds that Plaintiff is collaterally estopped from re-litigating her action.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this court at whose direction the service was made. My business address is REED SMITH LLP, 355 S. Grand Avenue, Suite 2900, Los Angeles, CA 90017.

On June 2, 2008, I electronically filed the following document(s) with the Clerk of the Court using the CM/ECF system, which sent electronic notification of such filing to all other parties appearing on the docket sheet, as listed below.

DEFENDANTS WMC MORTGAGE, LLC AND GE CONSUMER FINANCE.
INC.'S ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES
SHOULD BE RELATED

Patricia C. Barbera
24 Caribe Isle
Novato, CA 94949
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Facsimile: (415) 382-0756
In Pro Per

I declare under penalty of perjury under the laws of the United States that the above is true and correct. Executed on June 2, 2008, at Los Angeles, California.

/s/Patty Keen
Patty Keen